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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,615	04/06/2001	William C. Olson	64672/JPW/SHS/NS	5850

7590 02/21/2003

Cooper & Dunham, LLP  
1185 Avenue of the Americas  
New York, NY 10036

EXAMINER
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STUCKER, JEFFREY J

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 12/30/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 64/0
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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This Office Action is in response to the amendment filed 12/30/02. Claims 1-22 are pending and under final rejection.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The CRF has been entered and is acceptable.

The rejection of claims 5-10 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn in view of applicant's amendment.

The rejection of claims 1-10, 21, and 22 under 35 U.S.C. § 102(a) as being anticipated by Olson et al. (WO 0035409) is withdrawn in view of applicant's arguments.<sup>1</sup>

The rejection of claims 1, 2, and 5-10 under 35 U.S.C. § 102(b) as being anticipated by Vila-Coro et al. (PNAS 3/00) is withdrawn in view of the amendment to the claims.

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<sup>1</sup> Applicant's arguments would still be persuasive even without the typographical equivalent of shouting.

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The rejection of claims 1-22 under 35 U.S.C. § 103(a) as obvious over Olson et al. (WO 0035409) is withdrawn in view of applicant's arguments.

The rejection of claims 1-22 under 35 U.S.C. § 103(a) as obvious over Vila-Coro et al. (PNAS, 3/00) is maintained; see below.

The following are new ground of rejection necessitated by applicant's amendment:

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the

applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-22 are rejected under 35 U.S.C. § 103(a) as obvious over Vila-Coro et al. (PNAS 3/00).

Applicant has amended the claimed invention to providing the treatment solely after HIV-1 infection. This obviates the § 102 rejection but the claimed invention is obvious in view of the reference. Contrary to applicant's arguments, the process as now claimed and as taught by the reference as not significantly different. Applicant argues that there is no evidence in the reference as to whether pre- or post-infection treatment was responsible for the efficacy. This is not convincing as the process of HIV-1 infection, as applicant is aware, is a steady onslaught of fresh infections of uninfected T-cells until the immune system is overwhelmed and the patient succumbs to illness. Put another way, a fulminant infection requires a continuous supply of uninfected cells that replace infected cells that die-off which are in turn fresh victims of HIV-1 infection. Thus, infection is a process of continual infection. The mechanism of infection is the same whether it is the very first occurrence of the infection in a subject or a later infection of a T-cell in the subject. Given the prior art knowledge that the co-receptor is required to allow HIV-1 to enter a susceptible cell, it would be obvious to the

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artisan that blocking the co-receptor would be efficacious at any stage. Therefore, one would not exclude post-infection treatment. Thus, the instant invention is obvious over Vila-Coro et al.

No claims are allowed.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Papers related this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

The Group 1600 Fax numbers are: (703) 308-4242 and (703) 305-3014.

Unofficial communications may be faxed to: (703) 308-4426.

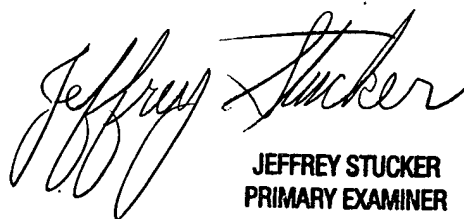
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Stucker whose telephone number is (703) 308-4237. The examiner can normally be reached Monday to Thursday from 7:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

  
**JEFFREY STUCKER**  
**PRIMARY EXAMINER**